

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:05CV436-03-MU

ROBERT EVERTON RUSHIE,

Plaintiff,

v.

Huseby Inc., et., al.,

Defendants.

ORDER

THIS MATTER comes before the Court on initial review of Plaintiff's Complaint under 42 U.S.C. § 1983, filed October 18, 2005. (Document No. 1.)

Plaintiff's Complaint, filed as a § 1983 claim, essentially contains allegations against a court reporter and her company for failure to transcribe all portions of Plaintiff's federal criminal trial in the Middle District of North Carolina. In his Complaint, Plaintiff concedes that none of the named defendants acted under color of state law and in fact specifically states that they were federal and not state actors. A case filed under 42 U.S.C. § 1983 requires a deprivation of a right secured by the Constitution by a person acting under color of state law. Defendants are not state actors and therefore cannot be sued under 42 U.S.C. § 1983. Plaintiff's Complaint is therefore DISMISSED.¹

NOW, THEREFORE, IT IS HEREBY ORDERED that Plaintiff's Complaint is

¹ The Court notes that Plaintiff unsuccessfully raised this issue in his 2255 petition in the Middle District of North Carolina. (1:04cv249). The Middle District concluded that the proper place to address this matter was on appeal. "That there was apparently no effort to reconstruct this part of the record on appeal and no issue was raised on appeal regarding these missing portions of the record, suggest that there were no issues favorable to Petitioner to be based on these portions of the record. Petitioner has failed to show otherwise. The Court therefore does not find any prejudicial violation of the Act that would merit relief on collateral review, and this claim should be dismissed."

Dismissed.

Signed: October 25, 2005

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
Chief United States District Judge

